



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

MISCELLANEOUS

IN THE MATTER OF CITY OF LAMBERTVILLE	)	ORDER APPROVING EXEMPTION
PETITION FOR AN EXEMPTION	)	
FROM MAIN EXTENSION RULES	)	
AT <u>N.J.A.C. 14:3-8.8(b)(1)</u>	)	Docket No. EW09080728

Cindy Ege, for the City of Lambertville, Lambertville, NJ

Michael J. Filippone, for Jersey Central Power and Light Company, Morristown, NJ

Geoffrey Gersten, Deputy Attorney General, on Behalf of Staff of the Board of Public Utilities

**BY THE BOARD:**

By this Order, the Board considers a request by the City of Lambertville located in Hunterdon County, New Jersey ("Petitioner") for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1). This section of the rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth for a project that will provide a significant public good. The Petitioner is installing a traffic light with a pedestrian crosswalk at the intersection of Swan Street and Route 165, a four lane road. The entire city of Lambertville is located in a rural environmentally sensitive planning area or PA4B, an area not designated for growth. In a letter dated July 20, 2009 and received by the Board on August 31, 2009, the city clerk of Lambertville, the Honorable Loretta Buckelew<sup>1</sup> petitioned the Board for an exemption under N.J.A.C. 14:3-8.8(b)(1), a significant public good exemption.

Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of installing electric service to the traffic light and crosswalk signal.

The cost from JCP&L to install a 35 foot pole and connect the necessary power to service the traffic light and crosswalk signal is \$11,419.53. The traffic signal has been installation has been completed under protest subject to the Board's determination regarding this Petition.

---

<sup>1</sup> After preparation and filing of the petition Ms. Buckelew resigned as Lambertville City Clerk. Ms. Cindy Eng is currently City Clerk and has assisted with the petition.

The Petitioner submits that it is exempt from the requirements for the costs of the extension pursuant to N.J.A.C. 14:3-8.8(b)(1), because the project will provide a significant public good, as described in N.J.A.C. 14:3-8.8(h). N.J.A.C. 14:3-8.8(h) provides that to obtain an exemption based on significant public good, a Petitioner must demonstrate to the Board that all of the following criteria are met: (1) the project or activity served by the extension would provide a significant benefit to the public or to the environment; (2) the project is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth; and (3) there is no practicable alternative means of providing the benefit while still complying with this subchapter. In assessing criterion two (2), the Board must consult with the Office of Smart Growth ("OSG") and other State agencies.

The Petitioner presents the following as to each criterion in N.J.A.C. 14:3-8.8(h):

**1. Whether the Project or Activity Served by the Extension will Provide a Significant Benefit to the Public or to the Environment**

Petitioner argues that the traffic signal at the intersection of Route 165 and Swan Street will provide a significant public health and safety benefit. The installation is the result of a pedestrian death and several injuries which resulted while pedestrians attempted to cross the four lane roadway. Lambertville residents have demanded a safer path to the center of the City.

The city prides itself as a walking community that is pedestrian friendly; unfortunately a portion of the City is separated by this four lane highway.

**2. That the project ... is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies**

The installation of a traffic light and pedestrian crosswalk in an established city promotes public safety and does not contribute to sprawl.

**3. There is no practicable alternative means of providing the benefit while still complying with this subchapter**

Lambertville is entirely located in a non-growth area; there are no other lands where the city could install the traffic light along Route 165 to correct the existing dangerous public safety concern while complying with this subchapter.

The area where the crosswalk will be built is currently used by residents and tourists headed toward the downtown tourist area containing many shops and restaurants in this tourist town located on the Delaware River directly across from New Hope, Pennsylvania. New Hope is accessible from New Jersey to pedestrians by a bridge crossing the Delaware River.

The following steps were taken by Board Staff and are part of the record that the Board has reviewed.



Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Staff consulted with the Office of Smart Growth. On October 2, 2009, Donna Rendiero, acting Executive Director of the Office of Smart Growth, has identified that Lambertville is predominantly PA 4B, rural environmentally sensitive, an area not designated for growth as provided by the New Jersey State Development and Redevelopment Plan ("State Plan"). As such it is not located in an area designated for growth.

Donna Rendiero's letter states,

"While the area is not in a smart growth area at this time, the 2001 State [Plan] identified Lambertville as a Proposed Town Center. Lambertville meets the Town Center criteria of compact and center-based development that offers the public the ability to live and walk throughout the mixed-use community. Mayor Del Vecchio has discussed his intentions to pursue Plan Endorsement and become a Town Center. They are in the initial process of gathering documents to schedule a pre-petition meeting.

The installation of a traffic light at this intersection addresses a public safety issue that will enable people to walk more safely. Policy 24 in the Coordinated Transportation Planning section of the State Plan addresses the importance of traffic calming as a means to enhancing pedestrian and bicycle circulation. Due to the cumulative effect of how the city has developed and the clear public benefit of this project OSG feels the exemption is appropriate."

#### **DISCUSSION:**

The Board's jurisdiction over utility extensions is found at N.J.S.A. 48:2-27, which provides that the Board "may ...require any public utility to establish, construct, maintain and operate any reasonable extension," where the extension is: (1) reasonable and practicable; (2) will furnish sufficient business to justify the construction; and (3) when the financial condition of the public utility reasonably warrants the original expenditure. In considering the requested exemption, the Board adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

The Board has reviewed the recommendation of the OSG, where it notes that the entire Borough is located in a rural environmentally sensitive or PA4B area not designated for growth. OSG further notes that the provision of infrastructure and related safety services at a reasonable cost in consideration of comprehensive planning is an important goal of Smart Growth.

Here, it can be argued that the public safety benefits of having a traffic control device and pedestrian crosswalk signal located where several pedestrian accidents have already occurred along a foot path from a populated area to an established area of restaurants and retail establishments outweighs the potential negative impact on the achievement of the State's smart growth goals. The Board notes that the traffic control device and pedestrian crosswalk signal is being installed to serve an existing community and is not necessitated by increased growth. See In the Matter of the Board of Fire Commissioners of Fire District #1 Freehold Township – Exemption from Smart Growth Regulations at N.J.A.C. 14:3-8.8(a)(5), BPU Dkt. GO05080718, September 19, 2005 (noting that public facility extensions necessitated by growth have ample notice of the spirit and letter of the law).



The Board therefore FINDS that the public good served by the traffic control device and pedestrian crosswalk signal constitutes a public good for purposes of the Main Extension Rules.

Therefore, the Board FINDS that benefit of this project is consistent with and outweighs any negative impacts on Smart Growth.

Additionally, because Lambertville is entirely located in a rural environmentally sensitive or PA4B area not designated for growth, there is no practicable alternative means of providing a safe road crossing for this intersection, within the town. Further, safety signals at a crosswalk must be placed at the appropriate intersection where foot traffic has been established. Therefore, the Board FINDS that there is no practical alternative of providing the benefit while still complying with the rules.

As to the remaining statutory requirements, the Board must ascertain that the financial condition of the utility warrants the expenditure and whether the extension will furnish sufficient business to justify the expense. Jersey Central Power and Light was sent a letter on September 11, 2009. Jersey Central Power and Light responded to this request on October 2, 2009. The letter indicated that, "[i]f the Board were to approve the exemption request and order JCP&L to treat the subject extension as if it were in a designated growth area, JCP&L would reprocess the line extension cost as a refundable deposit agreement.

After reviewing the exemption petition, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(b)(1) for a project that will provide a significant public good are met.

Specifically, the Board FINDS as follows: (1) the construction of the City of Lambertville traffic light and pedestrian crosswalk signal will constitute a significant benefit to the public; (2) that benefit to the public of the installation of the light and crosswalk signals at the intersection of Route 165 and Swan Street is consistent with and outweighs potential negative impacts on smart growth; (3) because the geographic location of Lambertville, which is entirely located in a rural environmentally sensitive or PA4B area not designated for growth, there is no practicable alternative means of providing a traffic light to address this unsafe condition, within the town, while still complying with the rules; and (4) due to the fact that this intersection at Swan Street has proven to be a pedestrian walking pattern from Route 165 through the city to access the center of the city, there is no alternative location for the signal. Additionally, the Department of Transportation has approved the installation of this traffic signal. Therefore, the Board HEREBY GRANTS the exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1) for an extension of electric service to the traffic light and pedestrian crosswalk signal located at the intersection route 165 and Swan Street in the City of Lambertville, Hunterdon County, New Jersey.

Pursuant to N.J.A.C. 14:3-8.8(j)(3), the Board is to determine the distribution of costs for the extension at the time of approval of the exemption based on significant public good. Therefore, the Board HEREBY ORDERS that the distribution of costs of extending electric service to the City of Lambertville traffic light and pedestrian crosswalk signal shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area.

DATED: 10/28/09


BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

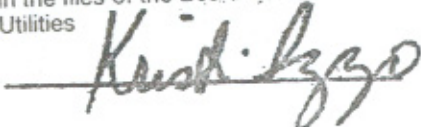
  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



IN THE MATTER OF THE CITY OF LAMBERTVILLE  
PETITION FOR AN EXEMPTION  
FROM MAIN EXTENSION RULES AT N.J.A.C.14:3-8.8(b) (1)

Docket No. EW09080728

SERVICE LIST

The Honorable Cindy Ege  
Lambertville City Clerk  
18 York Street  
Lambertville, NJ 08530

Michael J. Filippone  
Jersey Central Power and Light  
300 Madison Avenue  
PO Box 1911  
Morristown, NJ 07962-1911

Bethany Rocque-Romaine  
Smart Growth Advisor  
New Jersey Board of Public Utilities  
2 Gateway Center  
Newark, NJ 07102

Geoffrey Gersten, DAG  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07102

Stefanie Brand, Esquire  
Office of the Public Advocate  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
PO Box 46005  
Newark, NJ 07101